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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

ANDREW RIBOTTO et al.,
Plaintiffs and Respondents,
v.
GRAYSTONE PARTNERS, LP,
Defendant and Appellant.

A147713

(City & County of San Francisco
Super. Ct. No. CGC-14-538626)

This is an appeal from the judgment and postjudgment attorney fees award in a civil action involving plaintiffs Andrew Ribotto and Christina Powers (Tenants) and defendant Graystone Partners, LP (Graystone), the owner of their apartment building in the City and County of San Francisco. Judgment was entered in favor of Tenants after a jury found Graystone had engaged in marital status discrimination when taking certain steps toward evicting Tenants, a cohabiting unmarried couple. These included refusing to accept or investigate Tenants' declaration of domestic partnership issued by the City and County of San Francisco during the eviction process and/or refusing to accept one or more repair requests submitted by Powers, who was not named in the apartment lease.

At the same time, the jury rejected Tenants' claims that Graystone 1) invaded their privacy when undertaking certain security or surveillance measures and 2) interfered with their quiet enjoyment of the property. The trial court denied Graystone's motion for judgment notwithstanding the verdict (JNOV) and ordered Graystone to pay \$389,200 in attorney fees and \$8,227.50 in expert witness fees and costs, using a 1.3 multiplier.

On appeal, Graystone challenges both the jury's verdict and the trial court's subsequent denial of its JNOV motion, as well as the attorney fees award, as referenced.¹ In addition, Graystone contends the judgment should be reversed because Tenants' claims were based on Graystone's serving the three-day notice and filing the unlawful detainer action, and thus barred by Civil Code section 47, subdivision (b) (section 47(b)).

We affirm the judgment and postjudgment award in favor of Tenants, concluding there was substantial evidence of intentional discrimination on the basis of their marital status, as found by the jury. In addition, we conclude section 47(b) does not apply so as to bar Tenants' claims. Finally, we decide the trial court did not err by awarding attorney fees in the amount of \$389,200. As a result, we deny Graystone's request to reduce the fee award.

FACTUAL AND PROCEDURAL BACKGROUND

Ribotto and Powers began a romantic relationship in 2008 and, in April 2009, moved together from Toronto to San Francisco. After much looking, the couple found the apartment at issue, unit 5 of 254 Divisadero (Unit #5), a building owned and managed by Marcus Gaetani (Divisadero building). The couple advised Gaetani they were interested in Unit #5 and submitted a joint rental application. Gaetani agreed to rent both Ribotto and Powers the apartment but advised Ribotto that, due to Powers's poor credit history, he would require the lease to be in Ribotto's name only. The couple agreed to this arrangement, and in April 2009, Ribotto executed a Residential Tenancy Agreement (lease) and, with Powers, provided the requisite \$3,505.33 in security deposit and rent.

The lease, signed by Ribotto alone, contained numerous terms and conditions, including that "[n]o person other than the named Tenant shall be permitted to regularly or continuously use or occupy the Premises" unless specific conditions are met, including that "Tenant notifies Owner in writing, signed by every Tenant, stating a request to have

¹ In its notice of appeal, Graystone identifies the award of \$8,227.50 in expert witness fees and costs as one of the rulings under challenge. However, Graystone has not mentioned the validity or amount of this cost award as an issue on appeal in its briefs. We thus affirm the court's award without further discussion.

a new person occupy the Premises” In addition, the lease permitted “Tenant [to] have guests on the Premises for not over fifteen consecutive days or thirty days in a calendar year” unless he or she first obtained “prior written approval of Owner” Lastly, the lease provided that any modifications would be valid only if made “in writing signed by all parties”

Although Gaetani subsequently sold the Divisadero building to an unnamed entity, Tenants continued to cohabit and pay monthly rent. Then, on March 30, 2013, Graystone, a real estate investment partnership, purchased the Divisadero building, and Lucky and Ksenia Stewart were hired to manage it.² In early May 2013, the Stewarts conducted their first walk-through inspection of all apartments in the Divisadero building, including Unit #5. Both Ribotto and Powers were present and, according to Tenants, appeared together as a “couple” during the Stewarts’ visit. In addition, their apartment at the time contained two desks and women’s clothing in plain view in the small studio apartment.³ At this point, however, Tenants did not inform or discuss with the Stewarts the fact that they lived together in Unit #5 or that they had received verbal approval in 2009, notwithstanding the lease, for Powers to live there with Ribotto.

The Stewarts entered Unit #5 again on May 20, 2013, in order to rekey the lock on the front door, something being done to each apartment in the Divisadero building in an effort by Graystone to improve the safety of the premises.⁴ At this time, Tenants were

² Lucky was hired to supervise the management of approximately 800 to 900 Graystone rental units in San Francisco, including the Divisadero building, and Ksenia, his wife, was hired as the day-to-day building manager for the Divisadero building. We refer to them individually by first name to avoid confusion.

³ On direct examination, Ribotto testified that he introduced himself and Powers as a couple to the Stewarts during their inspection; however, on cross-examination, he clarified “me and Christina were both there. I don’t really feel like I would have to mention her. . . . We were obviously a couple at the time.” Powers similarly testified that, although they did not directly advise the Stewarts they were a cohabiting couple, this fact should have been “very clear”

⁴ Ksenia took photographs inside Unit #5 during her visit on May 20. The Stewarts testified Ksenia took photographs of a potential electrical problem arising from Ribotto’s many electronic devices and equipment. Tenants, on the other hand, testified

away on vacation. As a result, they did not receive the advance notice sent to all tenants that their locks would be changed and that new sets of keys would be needed to access their apartments. Thus, when Tenants returned home on May 20, they discovered their old set of keys no longer worked. Angry and confused, Ribotto contacted the Stewarts to demand access to his apartment. Ksenia responded to his second call, agreeing to come over to let him into Unit #5.

Around this time, the Stewarts became concerned that Powers was an unauthorized tenant after seeing her entering and leaving Unit #5 several times without Ribotto present. On May 20, 2013, Graystone served Ribotto with a Three Day Notice to Perform Covenant or Quit (three-day notice) informing him that, to avoid termination of the lease, Powers would have to vacate Unit #5. As Lucky explained at trial, he served the three-day notice in response to Ribotto's violation of the lease term limiting the right of residence to authorized tenants: "Everything I had was Mr. Ribotto was the named person on the lease. I didn't have anything [from the previous owners] with Miss Powers' name on it, period. I hadn't even had a conversation with Miss Powers."

On May 22, 2013, Ribotto responded to the three-day notice with a letter that advised Graystone that Powers, his "partner," had been approved by prior management to live in Unit #5 as an "unwritten subtenant." He then asked Graystone to "consider continuing to recognize Christina Powers as an unwritten subtenant in this unit as she has been for the past 4 years under the previous owners / management." Attached to his letter were copies of Powers's W-2 tax form and driver's license identifying her address as 254 Divisadero.

The same day, Lucky wrote back, refusing Ribotto's request to recognize Powers's tenancy, explaining, "Your lease only allows for you ONLY and you must comply with the 3 day notice in its entirety." The next day (May 23), Ribotto and Powers filed for and obtained a declaration of domestic partnership from the City and County of

the Stewarts were photographing their "commingled" belongings, including their underwear kept in private, closed drawers.

San Francisco (Declaration). At about 12:00 p.m. on May 23, the afternoon of the last day of the three-day notice period, Ribotto submitted a copy of the Declaration to Lucky, informing him Tenants were now registered domestic partners. Lucky did not recognize Tenants' newly obtained Declaration and, the next day, caused to be filed an unlawful detainer action against Ribotto in San Francisco Superior Court for violation of the lease.

During the discovery phase of the unlawful detainer proceedings, Graystone deposed a former employee of Gaetani, the previous owner, who testified that Gaetani knew Powers lived with Ribotto in Unit #5 and took no action to enforce the lease. Recognizing that prior management may have waived its right to enforce the lease against Ribotto, Graystone made the decision at that point to seek dismissal of its unlawful detainer action. From then on, Graystone recognized both Ribotto and Powers as authorized tenants of Unit #5.⁵

Notwithstanding the dismissal of the unlawful detainer action, the relationship between Tenants and the Stewarts had become quite strained. As Graystone began a series of repair and construction projects, this relationship worsened. Tenants complained about, among other things, the noise and debris caused by these projects, as well as the invasion of privacy from the various contractors entering their apartment and from the recently installed surveillance cameras on the property. In addition, the construction led to damage to their apartment, including holes made in their kitchen wall and bathroom ceiling. Lucky, on the other hand, insisted these projects and improvements were necessary, as the Divisadero building had become "pretty run down" under the prior owners.

On April 14, 2014, Tenants filed this civil action against Graystone, asserting causes of action for unlawful discrimination under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and the Unruh Civil Rights Act (Civ. Code, § 51); invasion of privacy—intrusion, surveillance and recording in violation of

⁵ At the time of trial, Tenants were still a couple, but Powers had moved elsewhere and only Ribotto still lived in Unit #5.

Penal Code section 632 et seq.; and interference with quiet enjoyment/breach of covenant of quiet enjoyment in violation of Civil Code sections 1549 et seq., 1940.2 et seq., and 1954 et seq.

At trial, the jury heard testimony from Tenants and the Stewarts, among others. On December 17, 2015, the jury returned a verdict in Tenants' favor on their marital status discrimination claim under FEHA and the Unruh Civil Rights Act, but rejected their invasion of privacy and quiet enjoyment claims. Specifically, the jury found that Graystone, substantially motivated by Tenants' marital status, served them a three-day notice, initiated and maintained an unlawful detainer action against them, refused to investigate complaints of marital status discrimination and/or refused to accept Powers's repair requests. On the other hand, the jury found that Graystone did not wrongfully enter Tenants' apartment, intentionally intrude into their personal space or belongings (including their drawers, desk area or personal papers), intentionally eavesdrop on or record their conversations with an electronic device, or breach their covenant of quiet enjoyment.

Finally, the jury found Graystone owed Tenants \$11,970 in economic damages, but nothing in noneconomic damages. Graystone's subsequent motion for partial JNOV was denied, and judgment was entered in Tenants' favor.

On February 5, 2016, Tenants filed a motion for attorney fees, expert witness fees and costs, and a prejudgment interest finding. Following a contested hearing, the trial court granted Tenants' motion and awarded them \$389,200 in attorney fees and \$8,227.50 in expert witness fees and costs. The court's award included a 1.3 multiplier based on the merit of pursuing the civil rights litigation. This appeal followed.

DISCUSSION

Graystone challenges the judgment and postjudgment attorney fees award on the following grounds. First, Graystone contends the jury's verdict against it on Tenants' marital status discrimination claim must be reversed because there is no evidence of intentional discrimination. Second, Graystone contends that, notwithstanding the lack of evidence supporting Tenants' statutory discrimination claim, the litigation privilege

protects Graystone from liability for actions it took to enforce the legality of Tenants' lease in court. Third, Graystone challenges the attorney fees award on the grounds that the amount awarded is unreasonable and that the multiplier added was unwarranted. We begin with Graystone's evidentiary challenge to the jury verdict.

I. Marital Status Discrimination Claim

Graystone seeks reversal of the judgment because it contends there is no substantial evidence that it discriminated against Tenants based on their marital status, whether under FEHA or the Unruh Civil Rights Act. Specifically, Graystone challenges the jury's findings that 1) Graystone served a three-day notice, initiated and maintained an unlawful detainer action against Tenants, refused to investigate complaints of marital status discrimination and/or refused to accept Powers's repair requests; and that 2) in doing so, Graystone was substantially motivated by Tenants' marital status. Graystone also necessarily challenges the trial court's subsequent denial of its motion for partial JNOV on the same ground.

On appeal, we review the jury's findings that Graystone was substantially motivated by discrimination, when undertaking the identified acts, for substantial evidence. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 375 (*Horsford*).) Likewise, the " 'appeal from the trial court's denial of [Graystone's] . . . motion for judgment notwithstanding the verdict is a challenge to the sufficiency of the evidence to support the jury's verdict and the trial court's decision.' " (*Carter v. CB Richard Ellis, Inc.* (2004) 122 Cal.App.4th 1313, 1320.) In conducting this substantial evidence review, we " ' "must read the record in the light most advantageous to [Tenants], resolve all conflicts in [their] favor, and give [them] the benefit of all reasonable inferences in support of the original verdict." ' " (*Ibid.*)

We now turn to the challenge at hand. In doing so, we point out the legal analysis for FEHA and Unruh Civil Rights Act claims is essentially the same. In fact, the parties stipulated before the trial court to provide a single special verdict form for both claims to the jury.

Under the Unruh Civil Rights Act, a cause of action exists for any person denied the right to “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever” based on that person’s marital status (among other things). (Civ. Code, § 51, subd. (b); accord, *Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 167 [“The Act expresses a state and national policy against discrimination on arbitrary grounds. [Citation.] Its provisions were intended as an active measure that would create and preserve a nondiscriminatory environment in California business establishments by ‘banishing’ or ‘eradicating’ arbitrary, invidious discrimination by such establishments”].) To prevail under the Unruh Civil Rights Act, the plaintiff must present proof of intentional acts of discrimination; the act does not cover disparate impact. (*Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 660–661 (*Mackey*).)

Likewise, under FEHA, it is unlawful for the owner of any housing accommodation to “discriminate against or harass any person because of the . . . marital status . . . of [that] person (Gov. Code, § 12955, subd. (a); *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1160 [FEHA protects unmarried cohabitants against housing discrimination].) “Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if . . . marital status . . . is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.” (Gov. Code, § 12955.8, subd. (a).)

As the California Supreme Court recently clarified, a plaintiff suing for discrimination under FEHA must produce evidence sufficient to show that an illegitimate reason or criterion was not just a motivating factor, but a substantial motivating factor in the allegedly discriminatory action: “Requiring the plaintiff to show that discrimination was a *substantial* motivating factor, rather than simply *a* motivating factor, more effectively ensures that liability will not be imposed based on evidence of mere thoughts

or passing statements unrelated to the disputed employment decision. At the same time, . . . proof that discrimination was a *substantial* factor in an employment decision triggers the deterrent purpose of the FEHA and thus exposes the [defendant] to liability, even if other factors would have led the [defendant] to make the same decision at the time.” (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232; accord, *Horsford, supra*, 132 Cal.App.4th at p. 375.)

As stated above, the jury found Graystone intentionally discriminated against Tenants based on their marital status when serving them with the three-day notice, initiating and maintaining the unlawful detainer action against them, refusing to investigate their complaints of marital status discrimination and/or refusing to accept Powers’s repair requests. On appeal, we are thus concerned with whether Tenants successfully countered Graystone’s legitimate nondiscriminatory reason for taking these actions (i.e., Tenants’ noncompliance with the lease) with evidence that was sufficient to “raise[] a rational inference that intentional discrimination occurred.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 357; accord, *Horsford, supra*, 132 Cal.App.4th at p. 377.) We conclude Tenants were able to make this requisite showing.

On appeal, Tenants identify the following as circumstantial evidence of Graystone’s discriminatory motive: 1) Graystone had knowledge of their relationship, as well as Powers’s leasehold, when or soon after it purchased the Divisadero building; 2) Graystone allows married tenants to live with their respective spouses “in peace” and does not require notice from a newly married tenant prior to having his or her spouse move in; 3) Graystone served the three-day notice after gathering evidence (including photographs) of Tenants’ cohabitation; 4) Graystone ignored and refused to investigate their marital status discrimination complaints; 5) Graystone refused to accept or investigate their Declaration; and 6) Graystone refused Powers’s requests to make one or more repairs in their apartment. We conclude based on this circumstantial evidence that the jury could properly conclude that Graystone was intentionally motivated to discriminate against Tenants based on their marital status.

A. Graystone's Knowledge of Tenants' Relationship

We first address Tenants' assertion that Graystone had notice of their domestic partnership and of Powers's leasehold. Tenants are correct in claiming both were present when the Stewarts conducted their initial Divisadero building walk-through in April 2013. The record is less clear, however, that the Stewarts knew or were informed at that time that Powers lived in the apartment or that she was an authorized tenant per an oral agreement with a previous owner (who predated the owner from whom Graystone purchased the Divisadero building). As Powers acknowledged at trial, while Tenants may have appeared to be a couple during this walk-through, neither she nor Ribotto recalled specifically advising the Stewarts of their relationship status or living situation during their visit. In addition, Lucky testified that when he served the three-day notice his only intention was to secure compliance with the lease and had nothing to do with their marital status: "Everything I had was Mr. Ribotto was the named person on the lease. I didn't have anything with Miss Powers' name on it, period. I hadn't even had a conversation with Miss Powers."

Based on the above information, on May 20, 2013, Graystone served Ribotto with the three-day notice advising him that Powers was required to vacate or the lease would be terminated. After the three-day notice was served, however, Lucky received additional information calling into question the validity of the notice. First, on May 22, 2013, Ribotto sent Lucky a written response stating:

"On May 20, I received a three-day notice, demanding that I remove my partner (Christina Powers) from the apartment that she and I have been living in for the past four years. In May of 2009 we rented unit #5 . . . that you now own (as of April 30th of this year.) At the time, Christina tried to be formally included on the lease but was unable to because of credit issues. The Gaetani Real Estate Company, the owner of the building then, ran a credit check at the time of her application but unfortunately their records on the buildings they no longer own only go back three years. Despite this, we made a verbal agreement to have my name (Andrew Ribotto) on the lease as the Master Tenant while Christina could stay as the unwritten subtenant.

“Since 2009, the building has also been managed under AMSI and Raskin Real Estate groups that have each conducted several walk-throughs of the unit. In all of these cases, she has presented herself as a tenant in the apartment and in these past four years we have never had had [*sic*] issues with her status as a tenant. . . . I hope that given the fact that she has not only established herself as a tenant but also fulfilled her responsibilities as one, you will consider continuing to recognize Christina Powers as an unwritten subtenant in this unit as she has been for the past 4 years under the previous owners / management.”

On May 22, 2013, Lucky wrote back, refusing Ribotto’s request to recognize Powers’s tenancy.

In addition to Ribotto’s May 22nd letter, attorney Jason Lundberg sent Lucky a letter on behalf of the Tenants dated May 23, 2013, demanding that Graystone cease its “actions.” In it, Mr. Lundberg wrote:

“Ms. Powers has resided in the unit for the last four years. This is a fact that has been known by all previous owners of [the Divisadero building] and any reason for an eviction regarding her tenancy has been waived. We have contacted witnesses and prior owners who will testify as to their knowledge of Ms. Powers’s tenancy.

“Regardless of the paragraph, [the Tenants] are registered domestic partners. As such, you have no right to attempt to evict Ms. Powers per Section 37.9 of the San Francisco Rental Ordinance. Thank you.”

Finally, during the afternoon of May 23, 2013, the last day of the three-day notice period, Ribotto submitted a copy of the Declaration, advising Lucky the Tenants were now registered domestic partners. Again, Lucky did not recognize Tenants’ newly obtained Declaration. The next day, he caused to be filed the unlawful detainer action against Ribotto in San Francisco Superior Court for violation of the lease.

Based on the above, we conclude that following service of the three-day notice, there is substantial evidence upon which the jury could have concluded that Graystone had *notice* that Tenants were cohabiting unmarried romantic partners who had both

occupied Unit #5 for some period of time pursuant to an oral rental agreement reached prior to Graystone's purchase of the Divisadero building.

B. Graystone's Policy and Practice Regarding Adding Tenants to a Lease

We turn next to Tenants' argument that Graystone's policy or practice of adding tenants to an existing lease discriminated against Tenants based on their marital status. Lucky testified that, with respect to the notice required of a tenant desiring to move in an additional tenant, Graystone would use a "case by case" approach and did not use a particular form. Ksenia confirmed this fact, explaining there was no particular form that they used for the purpose of adding a new marital spouse to a previously existing lease.

Typically, as Lucky explained, a newly married couple would provide something in writing with respect to their marriage in order to add the previously unnamed spouse to the lease as a subsequent tenant. This situation generally occurred several times per year. Lucky added that "whenever you wish to move somebody into any apartment that's not on the lease, regardless of the [marital] status, something has to be provided in writing to get landlord approval first."

More specifically, Lucky testified that of the 800 to 900 units that he manages, many have married people living in them. However, he acknowledged that he had never served a notice to quit on a married couple asking one of the spouses to leave. For purposes of adding a spouse, Lucky testified that a married person could write a letter saying, " 'Dear Mr. Stewart. . . . I would like to add my spouse or I would like to,' I think that would be sufficient if then it engages the communication prior to having a situation. . . ." As Graystone's expert witness testified, "A spouse is not an illegal occupant. They are—they have a familial relationship with the tenant. . . ."

On the other hand, Lucky had served a covenant or quit to sole tenants living with their romantic unmarried partners. When asked how many times he had done so, Lucky responded:

"I don't know offhand. In this industry, we pretty much have seen it all. So, I've—I don't honestly have an answer, but we usually serve a perform covenant or quit if we see there's an issue or in certain instances when we start seeing that something is not

with what the lease is, we are required to find out and typically how we do that is to serve the notice and then follow through and get the remaining answers after that. It happens in this industry all the time. Some are good. Some are bad. Some are scam. Some are not. It happens quite a bit.”

Based on Lucky’s testimony, we conclude there is substantial evidence to support an inference that Graystone’s policy and practice was to treat its married tenants more favorably than its unmarried cohabiting tenants when adding or seeking to add a tenant’s spouse to his or her lease. The jury was entitled to conclude that a married tenant need only provide Graystone with written notice of his or her marriage—no further investigation would be undertaken—and the spouse would be allowed to stay. There is no evidence that Graystone even required a copy of a marriage certificate. On the other hand, for unmarried cohabiting tenants such as Tenants, some sort of investigation would be undertaken.

Following service of the three-day notice, Ribotto took several affirmative steps to explain to Lucky why Powers’s presence in Unit #5 was not in violation of his lease, starting with the May 22nd letter describing 1) the informal agreement that he and Powers had reached with a prior owner of the Divisadero building allowing this arrangement and 2) notifying Graystone that Powers was his partner who had been living with him in the apartment for four years. On May 23rd, he and Powers had an attorney send a letter to Lucky to reinforce their position and to advise Lucky that they had witnesses to prove their account. As a final effort to convince Lucky, Tenants obtained the Declaration, which Lucky deemed to be “fishy” and “suspicious.” None of these efforts were enough to prevent Lucky from filing the unlawful detainer action, which ultimately cost Tenants \$11,970 in attorney fees only to be dismissed by Graystone following its confirmation of Tenants’ story during discovery.

Under the unique circumstances of this case, including, in particular, the fact Tenants repeatedly informed Graystone that the two were a couple and that Powers had obtained permission from a previous owner allowing her to cohabit with Ribotto without being named in the lease four years prior to this dispute, the jury was entitled to conclude

that Graystone actively pursued an unlawful detainer action against Tenants in keeping with a policy and practice that discriminated against unmarried cohabiting tenants. We express no opinion as to 1) whether, under different circumstances, an investigation by a landlord of a tenant's claim would be required or allowed; or 2) whether a landlord's unwillingness to accept a declaration of domestic partnership, without more, is evidence of marital status discrimination.

C. Powers's Repair Requests

Finally, we turn to Tenants' evidence that Lucky "refus[ed] to process" repair requests submitted by Powers. Lucky testified that, per Graystone's policy, all repair requests needed to come from the tenant named on the lease, and he told Ribotto not that the repairs would not be made but that Ribotto would need to resubmit the request in his name. Lucky also said, "In our industry, we only acknowledge and communicate regarding named parties on the lease Otherwise, it's a waiver of the owner's rights."

Although this may very well be how Graystone typically handles repair requests, this was not a typical situation. Most, if not all, of Powers's repair requests were made after Graystone had acknowledged Powers was entitled to remain as a tenant. Graystone had already acknowledged that Powers was entitled to remain as a tenant. There was no reason for Graystone not to acknowledge her requests to have repairs performed and, instead, to insist that the requests be made by Ribotto. Presumably, a spouse, whether named on the lease or not, would not have had to have the spouse named on the lease make such a repair request. Again, the jury was entitled to conclude that this different treatment was evidence of marital status discrimination, another example of Graystone treating its married tenants more favorably than its unmarried cohabiting tenants.

II. Litigation Privilege

We next turn to Graystone's argument that Tenants' claims are barred by the civil litigation privilege contained in section 47(b). More specifically, Graystone contends that the service of the three-day notice and the filing of the unlawful detainer action in this case are communications " " "(1) made in judicial or quasi-judicial proceedings;

(2) by litigants or other participants authorized by law; (3) to achieve the objects of litigation; and (4) that have some connection or logical relation to the action.” ’ ’ ”

Although Graystone cites several cases as authority for this position, it primarily relies on *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467 (*Feldman*), a decision by our colleagues at the First District Court of Appeal, Division Two. *Feldman*, which does arise in the context of an unlawful detainer claim, is not helpful to our analysis, which requires us to evaluate the applicability of section 47(b) to a marital status discrimination claim made pursuant to FEHA and/or the Unruh Civil Rights Act. *Feldman* correctly observed that the litigation privilege, which courts have interpreted broadly, generally applies to immunize defendants from tort liability. (*Id.* at pp. 1485–1486.) In addition, our colleagues held that section 47(b) also immunized the defendants from liability for a breach of contract claim arising from the landlord’s alleged wrongful conduct due to the threat of initiating litigation over a subtenancy. (*Id.* at pp. 1497–1498.)

To the contrary, *Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC* (2007) 154 Cal.App.4th 1273 (*DFEH*), which is cited by Tenants, is helpful and on point. Like *Feldman*, *DFEH* comes up in the context of an unlawful detainer action. Unlike *Feldman*, the basis of the lawsuit in *DFEH* was rooted in allegations of disability discrimination against the landlord for allegedly removing a disabled tenant through unlawful detainer proceedings after the tenant refused to disclose the nature of her disability to the landlord’s satisfaction.

In ruling on the landlord’s motion to strike certain portions of the tenant’s claim pursuant to the anti-SLAPP statute, the Court of Appeal affirmed the trial court’s denial of the landlord’s motion to strike. In doing so, it concluded that the gravamen of the tenant’s complaint was for disability discrimination rather than based on the landlord’s actions taken during the rent control removal proceeding and as protected activity in filing the unlawful detainer action. (*DFEH, supra*, 154 Cal.App.4th at p. 1284.)

Although *DFEH* addressed whether a motion to strike should have been granted under “SLAPP,” the court observed that the “anti-SLAPP statute and [section 47(b)] are

coextensive. If the statute applies then protection under the litigation privilege is congruent.” (*Id.* at p. 1288, fn. 23.) In reaching this conclusion, *DFEH* relied heavily upon California Supreme Court precedent which draws clear parallels between section 47 and the anti-SLAPP statute.⁶

Graystone first claims that *DFEH* is factually distinguishable from Graystone’s case because in *DFEH* there *was* evidence of discrimination while in Graystone’s case there is *no* evidence of discrimination. We have already decided this issue against Graystone and need address it no further.

Graystone also points to *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 284, which held that whether the landlord’s conduct was protected by the litigation privilege was irrelevant as to whether the landlord had satisfied his burden under the first prong of Code of Civil Procedure section 425.16. In *Birkner*, the landlord had sought to remove the tenant so that he could move his mother into the property. Tenant sued alleging wrongful eviction—violation of a rent ordinance plus various tort theories. *Birkner* is of no assistance to Graystone in the context of this case. Here, as in *DFEH*, we must decide whether the gravamen of Tenants’ complaint was based on Tenants’ claim of discrimination or a result of Graystone’s protected activity in the filing of the unlawful detainer action. Like in *DFEH*, we conclude the gravamen of Tenants’ complaint is based on their marital status discrimination claim, as found by the jury.

⁶ “(See *Briggs [v. Eden Council for Hope & Opportunity]* (1999) 19 Cal.4th 1106, 1115 [81 Cal.Rptr.2d 471, 969 P.2d 564] [“[j]ust as communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of [section 47(b)] [citation] , . . . such statements are equally entitled to the benefits of [Code of Civil Procedure] section 425.16.” [Citations.]’]; *Equilon Enterprises, LLC v. Consumer Cause, Inc.* [(2002)] 29 Cal.4th 53, 64; *City of Cotati v. Cashman* [(2002)] 29 Cal.4th 69, 76; *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc.* [(2006)] 137 Cal.App.4th 1118, 1125–1126 [“[c]lauses (1) and (2) of [Code of Civil Procedure] section 425.16, subdivision (e) . . . are coextensive with [section 47(b)].” [Citation.’.]” (*DFEH, supra*, 154 Cal.App.4th at p. 1288, fn. 23.)

We acknowledge that in their complaint, Tenants alleged various claims which may have arguably come within the parameters of section 47(b), for example, the claims alleging invasion of privacy and breach of the covenant of quiet enjoyment. As we previously have mentioned, however, the jury found against Tenants on both of these claims; thus, they are not before us now. Tenants *did* prevail on their claim of marital status discrimination. As a result, we solely address whether this single claim falls within the litigation privilege set forth in section 47(b). In keeping with the reasoning of *DFEH*, we conclude that it does not. (See also *Winslett v. 1811 27th Avenue, LLC* (2018) 26 Cal.App.5th 239, 254, 257 [declining to follow *Feldman* in a retaliatory eviction case brought under Civil Code section 1942.5 after concluding: “ ‘If the litigation privilege trumped a suit for retaliatory eviction under section 1942.5 the privilege would “ ‘effectively immunize conduct that the [statute] prohibits’ ” [citation], thereby encouraging, rather than suppressing, “ ‘the mischief at which it was directed. [Citation.]’ ” ’ [Citation.]”].)

III. Attorney Fees Claim

Graystone’s final argument is twofold: 1) if the marital status discrimination claim survives review, then the attorney fees awarded to Tenants in the amount of \$389,200 should be reduced; and 2) in any event, the court should not have used a multiplier in calculating attorney fees.

We begin by observing that FEHA authorizes the court to exercise its discretion to award reasonable attorney fees and costs to a prevailing party. (Gov. Code, § 12965, subd. (b).) In addition, the Unruh Civil Rights Act authorizes attorney fees to a person denied his or her rights provided in Civil Code section 51. (Civ. Code, § 52, subd. (a).) With these statutes in mind, we need not question whether Tenants are entitled to an award of attorney fees. They clearly are—the question is whether \$389,200 is a reasonable amount.

A. “Limited” Jury Award of \$11,970

The jury awarded Tenants economic damages in the amount of \$11,970 as compensation for their claim alleging marital status discrimination. This amount

coincides with the amount that Tenants paid to their attorney in defending against Graystone's unlawful detainer action, which Graystone ultimately dismissed. Graystone seizes upon a sentence contained within the trial court's 16-page ruling entitled "ORDER ON PLAINTIFFS' MOTION FOR ATTORNEY'S FEES, EXPERT COSTS, PRE-JUDGMENT INTEREST" (Fee Order), where the court explained its reasoning in great detail. On page 6 of the Fee Order, while acknowledging that Tenants' recovery was limited to \$11,970, the court wrote, "But [Tenants] also sought non-economic damages that at least one juror seemed willing to award and statutory penalties that at least three jurors seemed willing to award." Based on this comment by the court, Graystone takes the position that "[t]he trial court's reasoning turns the civil jury system on its head." Graystone reasons that the court ostensibly focused on what one juror seemed willing to award and not on what eleven jurors actually did award, i.e., no economic damages. Along the same lines, Graystone complains that the trial court focused on what at least three jurors seemed willing to award as opposed to what nine jurors did award, i.e., no statutory penalties.

We begin with the legal standard of review as set out in *Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 989–990 (*Chavez*), which states, "Although fees are not reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims [citation], 'under state law as well as federal law, a reduced fee award is appropriate when a claimant achieves only limited success' [citations]." In reliance on *Chavez*, Graystone contends that the jury's " 'limited' " award in the amount of \$11,970 "was a limited victory, if a victory at all." As support for this position, Graystone asserts that Tenants only prevailed on their marital status discrimination claim, with the jury rejecting their other claims including unlawful entry, invasion of privacy, unlawful surveillance, and breach of the covenant of quiet enjoyment. Tenants, on the other hand, disagree, arguing that even if their claims alleging invasion of privacy and breach of the covenant of quiet enjoyment had *not* been pleaded, Tenants would still have presented all of the same evidence (e.g., relating to alleged unlawful surveillance, vexatious construction, etc.) in support of their marital status discrimination claim under FEHA and

the Unruh Civil Rights Act. Consequently, Tenants contend all of their claims relate to each other.

The trial court was very cognizant of the factual circumstances of this case and the jury's findings. Although Graystone contends these "unsupported allegations" did not support Tenants' marital status discrimination claim, the trial court concluded in its Fee Order that these claims *were* factually and legally related to the marital status discrimination claim. As part of its careful and thorough analysis, the trial court observed that Tenants' "apparent objective was to hold [Graystone] accountable for its unlawful eviction efforts. The jury verdict does that. . . . Here, [Tenants] sought to remedy a unified course of conduct: [Graystone's] effort to get them out of the building. Thus, [Tenants'] unsuccessful claims were not so legally distinct as to be unrelated to their successful claims for purposes of the *Hensley v. Eckerhart* (1983) 461 U.S. 424] analysis." Under these circumstances, we defer to the trial court given its closer proximity to the issues and evidence presented to this jury during the trial. (See *Chavez, supra*, 47 Cal.4th at pp. 990–991 [trial court is in a much better position than Court of Appeal to determine whether action could have been litigated as a limited civil case].)

We conclude that the trial court acted within its discretion in awarding Tenants their attorney fees in the amount of \$389,200, as detailed in the Fee Order.⁷

B. Use of a Multiplier

Last, Graystone argues there was no justification for the trial court to use a multiplier and that the award of \$389,200 should, at a minimum, be reduced. Graystone cites to *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, in support of its contention without any detailed analysis, essentially taking the position that "even if this case presented novel and difficult issues" Tenants "simply did not prove their case, under

⁷ Graystone makes much of the fact that the jury's award to Tenants of \$11,970 appears to be for attorney fees incurred by Tenants in their defense of the dismissed unlawful detainer action. This argument is of no consequence. Tenants clearly benefitted by being awarded this amount either to pay their attorney or to be reimbursed for fees already paid.

well-established law.” The jury and the trial court concluded, contrary to Graystone’s argument on appeal, that Tenants *did* prove their claim of unlawful marital status discrimination. We have upheld the jury’s decision concluding it is supported by substantial evidence. In light of this and the paucity of Graystone’s argument, we need not address any further Graystone’s contention that the trial court erred by using a multiplier.

DISPOSITION

The judgment and postjudgment award of attorney fees and expert witness fees and costs are affirmed. Tenants are awarded their costs on appeal.

Wiseman, J.*

WE CONCUR:

Siggins, P. J.

Fujisaki, J.

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.